

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HOLMES GROUP, INC.,	:	
	:	
Plaintiff/Counterclaim-Defendant,	:	Civil Action No. 1: 05-CV-11367 WGY
	:	(Alexander, M.J.)
v.	:	
	:	
WEST BEND HOUSEWARES, LLC and	:	
FOCUS PRODUCTS GROUP, L.L.C.,	:	
	:	
Defendants/Counterclaim-Plaintiffs.	:	

HOLMES' MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL

Plaintiff, The Holmes Group, Inc., now known as Sunbeam, Inc., d/b/a/ Jarden Consumer Solutions, (hereinafter "Holmes") respectfully moves the Court for leave to file under seal, select Exhibits to its Memorandum in Support of its Motion to Compel the Production of Documents By West Bend, which has been filed concurrently. The select Exhibits identified below comprise West Bend documents which have been designated "Confidential - Attorneys Eyes Only" under the Protective Order in these proceedings.

The undersigned requested that West Bend de-designate these Exhibits and other documents in an e-mail dated January 10, 2007. West Bend's counsel agreed to de-designate some of the documents identified in our letter. These documents have been included in the text and Exhibits to the Memorandum, as filed. However, West Bend has refused to de-designate the following documents, identified in its letter, dated January 11, 2007. (West Bend's January 11th

and our e-mail request dated January 10, 2007 are annexed as Exhibit A.) The documents requested to be filed under seal include the following:

- Exhibit A - WB 000534-WB 000535: E-mails dated April 12 & 13, 2004 and an attachment - showing West Bend's accused product design illustration;
- Original Attachments (WB 004600-WB 004608) to letter filed as Exhibit E; these include documents relating to a confidentiality agreement with OEM dated November 10, 2004; e-mail communications regarding this agreement and invoices and related shipping documents for the accused West Bends electronic slow-cookers sold to Walmart, dated May 30, 2005.
- Exhibit F - WB 004016- WB 004017;
WB 004131;
WB 004085;
WB 004541- WB 004542;
WB 001346;
WB 001369;
WB 004010;
WB 003560-WB 003568;
WB 000080-WB 000081;
WB 002260-WB 002263; and
WB 001961-WB 002019.

These include samples of documents produced by West Bend relating to its development of a manual oval slow-cooker in collaboration with OEM, during the time frame of 1997 to 1999, that forms the basis of West Bend's counterclaim for design patent infringement. These documents illustrate the type of records that should have been maintained and produced for its accused programmable slow cooker corresponding to the time frame of 2002 to April 2004, and include numerous and detailed planning, scheduling and product development documents, presentations, marketing materials and notes were generated and retained both in-house and exchanged with OEM and additional third-parties. Even a detailed project schedule that was

exchanged with OEM and updated periodically was maintained by West Bend and produced for the 1997 to 1999 product development.

- Exhibit H - WB 002073-WB 002119: is a document entitled “2005 Objectives” which describes tasks appointed to various West Bend employees with regard to the programmable slow-cooker project for 2005 (a corresponding document for 2004 was requested and not produced).

Holmes believes that these Exhibits shed light on the types of documents maintained by West Bend in similar collaborations with its overseas manufacturer and supplier and would be valuable to the Court in deciding the Holmes Motion to Compel.

WHEREFORE, Holmes respectfully moves this honorable Court for the issuance of an Order permitting the filing under seal of the requested documents for consideration with the pending Holmes Motion to Compel the Production of Documents By West Bend.

Respectfully submitted,

SUNBEAM PRODUCTS, INC.,
d/b/a JARDEN CONSUMER SOLUTIONS
f/k/a THE HOLMES GROUP
By its Attorneys,

Dated: January 11, 2007

/s/ Alan M. Sack
Charles R. Hoffmann, Esq. (*Pro Hac Vice*)
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and

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CERTIFICATE OF SERVICE

I hereby certify that this document filed by ECF on January 11, 2007.

/s/ Alan M. Sack
Alan M. Sack

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January 11, 2007

VIA EMAIL

Alan M. Sack, Esq.
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6900 Jericho Turnpike
Syosset, NY 11791-4407

RE: *The Holmes Group, Inc. v. West Bend Housewares, LLC., et al.*
Case No. 05-CV-11367-WGY

Dear Alan:

This letter responds to your email request yesterday to remove West Bend documents from protection under the Protective Order. A copy of this email is enclosed. You have not indicated your reasons for seeking to have this information removed from protection under the Protective Order.

West Bend agrees to remove from protection under the Protective Order the following:

- Gary Shabino deposition transcript pages 24-27 and 55-57
- WB000080-81 (which was not subject to the Protective Order)
- WB002794-2795

The remaining documents identified in your request all include proprietary information related to product development, sales, marketing, and business plans. West Bend does not want this information disclosed to Holmes or any other competitor.

Please contact me should you wish to discuss this further.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP



Joseph T. Miotke

Enclosure

Miotke, Joseph T.

From: Sack, Alan [ASack@hoffmannbaron.com]
Sent: Wednesday, January 10, 2007 1:54 PM
To: Miotke, Joseph T.
Cc: Gayoso, Tony A.
Subject: RE: West Bend / Holmes - De-Designation of Deposition Testimony and Documents
Sensitivity: Confidential
Attachments: Alan Sack (ASack@hoffmannbaron.com).vcf

Dear Joe:

Please advise whether West Bend / Focus Products has any objection to removing the documents or portions of documents listed below from protection under the Protective Order:

- 1) Gary Shabino, Deposition transcript pages 24-27 and 55-57;
- 2) WB 004600-4608;
- 3) WB 00534-00535;
- 4) WB 004016-4017;
- 5) WB 004131;
- 6) WB 004085;
- 7) WB 004541-4542;
- 8) WB 001346;
- 9) WB 001369;
- 10) WB 004010;
- 11) WB 003560-3568;
- 12) WB 000080-0081;
- 13) WB 002260-2263;
- 14) WB 002073-2119;
- 15) WB 002794-2795; and
- 16) WB 001961-2019.

Thank you.

Very truly yours,

Alan M. Sack

Partner

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1/11/2007